

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

DEREK MORTLAND,

Plaintiff,

vs.

IK ONKAR HOSPITALITY, LLC,

Defendant.

CASE NO.: _____

JUDGE _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES:**

1ST CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of the Americans with Disability
Act of 1990 ("Title III" and "ADA"),
42 U.S.C. §§ 12181 *et seq.*

Plaintiff Derek Mortland Complains of Defendant IK Onkar Hospitality, LLC, and
alleges as follows:

INTRODUCTION:

1. This is a civil rights action for discrimination against persons with physical disabilities, of which plaintiff is a member of, for failure to remove architectural barriers structural in nature at Defendant's property, a place of public accommodation, thereby discriminatorily denying plaintiff access to, the full and equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and accommodations thereof. Plaintiff seeks injunctive relief pursuant to the Americans with Disability Act of 1990 ("title III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.*

2. Plaintiff Derek Mortland is a person with physical disabilities who, on or about November 14, 2023, through November 15, 2023, was an invitee, guest, patron, or customer at Defendant's property, which houses a Comfort Suites hotel, located at 1137 W. 15th Street, Auburn, IN 46706. At said time and place, Defendant failed to provide proper legal access to the

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1 property, which is a public accommodation and/or public facility. The denial of access was in
2 violation of federal legal requirements, and Mr. Mortland suffered violations of his civil rights to
3 full and equal access and was embarrassed and humiliated.

4
5 **JURISDICTION AND VENUE:**

6 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
7 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq.

8 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
9 founded on the facts that the real property which is the subject of this action is located in this
10 district, in the City of Auburn, County of DeKalb, State of Indiana and that plaintiff's causes of
11 action arose in this district.

12
13 **PARTIES:**

14 5. Plaintiff Derek Mortland is a "physically handicapped person," a "physically
15 disabled person," and a "person with physical disabilities." (Hereinafter the terms "physically
16 disabled," "physically handicapped" and "person with physical disabilities" are used
17 interchangeably, as these words have similar or identical common usage and legal meaning.) Mr.
18 Mortland is a "person with physical disabilities," as defined by all applicable United States laws.
19 Mr. Mortland requires the use of a wheelchair to travel about in public. Consequently, Mr.
20 Mortland is a member of that portion of the public whose rights are protected by Indiana Civil
21 Rights Law.

22
23 6. Defendant IK Onkar Hospitality, LLC, an Indiana limited liability company, is the
24 owner and operator, lessor and/or lessee, or agent of the owner, lessor and/or lessee, of the
25 building and/or buildings which constitute a public facility in and of itself, occupied by a
26 Comfort Suites hotel, a public accommodation, located at/near 1137 W. 15th Street, Auburn, IN
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1 46706, and subject to the requirements of the Americans with Disability Act of 1990 (“TITLE
2 III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, and to all other legal requirements referred to in
3 this complaint.

4
5 7. At all times relevant to this complaint, Defendant is the lessee, or agent of the
6 lessee, and/or lessor, of said premises, and owns and operates the subject Comfort Suites hotel as
7 a public facility at/near 1137 W. 15th Street, Auburn, IN 46706. The business, a Comfort Suites
8 hotel, is open to the general public and conducts business therein. The business operating on said
9 premises is a public accommodation.

10
11 8. At all times relevant to this complaint, Defendant is the landlords/lessors,
12 tenants/lessees and the owners and operators of the subject hotel, a public accommodation
13 located at/near 1137 W. 15th Street, Auburn, IN 46706. As such, Defendant is jointly and
14 severally responsible to identify and remove architectural barriers pursuant to Code of Federal
15 Regulations section 36.201(b), which states in pertinent part:

16
17 **§ 36.201 General**

18 (b) Landlord and tenant responsibilities. Both the landlord
19 who owns the building that houses a place of public
20 accommodation and the tenant who owns or operates the place of
21 public accommodation are public accommodations subject to the
22 requirements of this part. As between the parties, allocation of
23 responsibility for complying with the obligations of this part may
24 be determined by lease or other contract.

25 CFR §36.201(b)

26 9. Plaintiff does not know the true names of Defendant, its business capacities, its
27 ownership connection to the property and business, nor their relative responsibilities in causing
28 the access violations herein complained of. Plaintiff is informed and believes that the Defendant
herein is a public accommodation, and is the agent, ostensible agent, master, servant, employer,

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1 employee, representative, franchisor, franchisee, partner, and associate, or such similar capacity,
2 of each of the other defendants, if any, and was at all times acting and performing, or failing to
3 act or perform, within the course and scope of his, her or its authority as agent, ostensible agent,
4 master, servant, employer, employee, representative, franchiser, franchisee, partner, and
5 associate, or such similar capacity, and with the authorization, consent, permission or ratification
6 of each of the other defendants, and is responsible in some manner for the acts and omissions of
7 the other defendants in legally causing the violations and damages complained of herein, and
8 have approved or ratified each of the acts or omissions of each other defendant, as herein
9 described.
10
11

12 **PRELIMINARY FACTUAL ALLEGATIONS:**

13 10. Defendant is the entity that is a public accommodation that owns, leases (or
14 leases to), or operates, a Comfort Suites hotel, located at 1137 W. 15th Street, Auburn, IN 46706.
15 The Comfort Suites hotel and each of its facilities are places “of public accommodation” subject
16 to the requirements of the Americans with Disability Act of 1990 (“TITLE III” AND “ADA”),
17 42. U.S.C. §§ 12181, *et seq.* On information and belief, said facility has undergone “alterations,
18 structural repairs and additions,” each of which has subjected the Comfort Suites hotel to
19 handicapped access requirements.
20

21 11. Plaintiff Derek Mortland is a person with a disability. Mr. Mortland is a
22 “physically disabled person,” as defined by all applicable Indiana and United States laws. Mr.
23 Mortland is paralyzed and requires the use of a wheelchair for mobility and to travel in public.
24

25 12. At all times referred to herein and continuing to the present time, Defendant
26 advertised, publicized and held out the Comfort Suites hotel as being handicapped accessible and
27 handicapped usable.
28

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1 13. On or about November 14, 2023, through November 15, 2023, Mr. Mortland was an
2 invitee and guest at the subject Comfort Suites hotel, arriving for purposes of obtaining lodging.

3 14. Upon his arrival, during his patronizing of the public accommodation, and upon his
4 exit of the facility, Mr. Mortland personally encountered architectural barriers which denied him
5 the full and equal access to the property.
6

7 15. Therefore, at said time and place, Mr. Mortland, who is a person with disabilities,
8 encountered numerous inaccessible elements of the subject Comfort Suites hotel which
9 constituted architectural barriers and a denial of the proper and legally required access to a public
10 accommodation to persons with physical disabilities. *By way of example and not as an*
11 *exhaustive inventory of Defendant's violations*, barriers to access were personally encountered by
12 Mr. Mortland within the facility's (1) parking, (2) entrance / lobby, (3) guest room 108, (4) guest
13 room 101, (5) exterior, (6) pool area, (7) public unisex restroom, (8) breakfast area, (9) business
14 area, (10) fitness area, (11) laundry room, as well as (12), upon information and belief, the other
15 accessible guest rooms.
16

17
18 On personal knowledge, information and belief, other public facilities and elements too
19 numerous to list were improperly inaccessible for use by persons with physical disabilities.

20 16. At all times stated herein, the existence of architectural barriers at Defendant's
21 place of public accommodation evidenced "actual notice" of Defendant's intent not to comply
22 with the Americans with Disability Act of 1990 ("TITLE III" AND "ADA"), 42. U.S.C. §§
23 12181 *et seq.*, either then, now or in the future.
24

25 17. As a legal result of Defendant's failure to act as a reasonable and prudent public
26 accommodation in identifying, removing or creating architectural barriers, policies, practices and
27 procedures that denied access to plaintiff and other persons with disabilities, plaintiff suffered
28

1 damages as alleged herein.

2 18. As a further legal result of the actions and failure to act of Defendant, and as a
3 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
4 herein, Mr. Mortland was denied his civil rights to full and equal access to public facilities. Mr.
5 Mortland suffered a loss of his civil rights and his rights as a person with physical disabilities to
6 full and equal access to public facilities, and further suffered from personal physical injury,
7 shame, humiliation, embarrassment, anger, disappointment and worry, expectedly and naturally
8 associated with a person with physical disabilities being denied access, all to his damages as
9 prayed hereinafter in an amount within the jurisdiction of this court.
10
11

12 19. On information and belief, construction alterations carried out by Defendant has
13 triggered access requirements under Americans with Disability Act of 1990 (“TITLE III” AND
14 “ADA”), 42. U.S.C. §§ 12181 *et seq.*
15

16 20. MORTLAND, as described herein below, seeks injunctive relief to require the
17 Comfort Suites hotel to be made accessible to meet the requirements of both Indiana law and the
18 Americans with Disabilities Act, whichever is more restrictive, so long as Defendant operates
19 and/or leases the Comfort Suites hotel as a public facility. Plaintiff seeks damages for violation
20 of his civil rights, from the date of his visit until such date as Defendant brings the establishment
21 into full compliance with the requirements of Indiana and federal law.
22

23 21. On information and belief, Defendant has been negligent in its affirmative duty
24 to identify the architectural barriers complained of herein and negligent in the removal of some
25 or all of said barriers.

26 22. Because of Defendant’s violations, Mr. Mortland and other persons with physical
27 disabilities are unable to use public facilities such as those owned and operated by Defendant on
28

1 a “full and equal” basis unless such facility is in compliance with the provisions of the
2 Americans with Disabilities Act and other accessibility law as plead herein. Plaintiff seeks an
3 order from this court compelling Defendant to make the Comfort Suites hotel accessible to
4 persons with disabilities.
5

6 23. Plaintiff is informed and believes and therefore alleges that Defendant caused the
7 subject property to be constructed, altered and/or maintained in such a manner that persons with
8 physical disabilities were denied full and equal access to, within and throughout said facility of
9 the Comfort Suites hotel and were denied full and equal use of said public facility. Further, on
10 information and belief, Defendant has continued to maintain and operate said facility in such
11 conditions up to the present time, despite actual and constructive notice to such Defendant that
12 the configuration of the establishment and/or its building(s) are in violation of the civil rights of
13 persons with physical disabilities, such as plaintiff and the disability community. Such
14 construction, modification, ownership, operation, maintenance and practices of such public
15 facilities are in violation of law as stated in Americans with Disability Act of 1990 (“TITLE III”
16 AND “ADA”), 42. U.S.C. §§ 12181, *et seq.*
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18

19 24. On personal knowledge, information and belief, the basis of Defendant’s actual
20 and constructive notice that the physical configuration of the facilities including, but not limited
21 to, architectural barriers constituting the Comfort Suites hotel was in violation of the civil rights
22 of persons with physical disabilities, such as plaintiff, includes, but is not limited to,
23 communications with invitees and guests, owners of other establishments and businesses, notices
24 Defendant obtained from governmental agencies upon modification, improvement, or substantial
25 repair of the subject premises and other properties owned by the Defendant, newspaper articles
26 and trade publications regarding the Americans with Disabilities Act and other access laws,
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1 public service announcements, and other similar information. Defendant's failure, under state
2 and federal law, to make the establishment accessible is further evidence of Defendant's
3 conscious disregard for the rights of plaintiff and other similarly situated persons with
4 disabilities. The scope and means of the knowledge of Defendant are within Defendant's
5 exclusive control and cannot be ascertained except through discovery.
6

7 25. Plaintiff will return to the subject Comfort Suites hotel to patronize the
8 facility, if it is made fully accessible to a disabled person in a wheelchair, and to also avail
9 himself of the hotel's services.
10

11 26. Should the Comfort Suites hotel become accessible, Mr. Mortland will visit it again
12 because he will travel through Auburn, Indiana in Spring and Summer 2024.

13 27. Furthermore, plaintiff intends to return to the Comfort Suites hotel on an annual basis
14 beginning in 2024, to ascertain whether Defendant removed the barriers to access which are the
15 subject of this litigation.
16

17 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
18 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
19 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

20 28. Plaintiff pleads and incorporates by reference, as if fully set forth again herein,
21 the allegations contained in paragraphs 1 through 30 of this complaint.

22 29. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
23 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
24 protect:

25 some 43 million Americans with one or more physical or mental
26 disabilities; [that] historically society has tended to isolate and
27 segregate individuals with disabilities; [that] such forms of
28 discrimination against individuals with disabilities continue to be a
serious and pervasive social problem; [that] the nation's proper
goals regarding individuals with disabilities are to assure equality

1 of opportunity, full participation, independent living and economic
2 self-sufficiency for such individuals; [and that] the continuing
3 existence of unfair and unnecessary discrimination and prejudice
4 denies people with disabilities the opportunity to compete on an
equal basis and to pursue those opportunities for which our free
society is justifiably famous.

5 30. Congress stated as its purpose in passing the Americans with Disabilities Act of
6 1990 (42 U.S.C. §12102):
7

8 It is the purpose of this act (1) to provide a clear and
comprehensive national mandate for the elimination of
9 discrimination against individuals with disabilities; (2) to provide
clear, strong, consistent, enforceable standards addressing
10 discrimination against individuals with disabilities; (3) to ensure
that the Federal government plays a central role in enforcing the
11 standards established in this act on behalf of individuals with
disabilities; and (4) to invoke the sweep of Congressional
12 authority, including the power to enforce the 14th Amendment and
to regulate commerce, in order to address the major areas of
13 discrimination faced day to day by people with disabilities.
14

15 31. As part of the Americans with Disabilities Act of 1990, (hereinafter the “ADA”),
16 Congress passed “Title III - Public Accommodations and Services Operated by
17 Private Entities” (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
18 accommodations identified for purposes of this title was:
19

20 (7) PUBLIC ACCOMMODATION - The following private
entities are considered public accommodations for purposes of this
21 title, if the operations of such entities affect commerce -

22 . . .

(A) an inn, hotel, motel, or other place of lodging ***;

23 42 U.S.C. §12181(7)(A).
24

25 32. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated
26 against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
27 privileges, advantages, or accommodations of any place of public accommodation by any person
28 who owns, leases, or leases to, or operates a place of public accommodation.”

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1 33. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
2 42 U.S.C. §12182(b)(2)(a) are:

3 (i) the imposition or application of eligibility criteria
4 that screen out or tend to screen out an individual with a disability
5 or any class of individuals with disabilities from fully and equally
6 enjoying any goods, services, facilities, privileges, advantages, or
7 accommodations, unless such criteria can be shown to be
8 necessary for the provision of the goods, services, facilities,
9 privileges, advantages, or accommodations being offered;

10 (ii) a failure to make reasonable modifications in
11 policies, practices, or procedures, when such modifications are
12 necessary to afford such goods, services, facilities, privileges,
13 advantages or accommodations to individuals with disabilities,
14 unless the entity can demonstrate that making such modifications
15 would fundamentally alter the nature of such goods, services,
16 facilities, privileges, advantages, or accommodations;

17 (iii) a failure to take such steps as may be necessary to
18 ensure that no individual with a disability is excluded, denied
19 services, segregated or otherwise treated differently than other
20 individuals because of the absence of auxiliary aids and services,
21 unless the entity can demonstrate that taking such steps would
22 fundamentally alter the nature of the good, service, facility,
23 privilege, advantage, or accommodation being offered or would
24 result in an undue burden;

25 (iv) a failure to remove architectural barriers, and
26 communication barriers that are structural in nature, in existing
27 facilities . . . where such removal is readily achievable; and

28 (v) where an entity can demonstrate that the removal of
a barrier under clause (iv) is not readily achievable, a failure to
make such goods, services, facilities, privileges, advantages or
accommodations available through alternative methods if such
methods are readily achievable.

37. The acts of Defendant set forth herein were a violation of plaintiff's rights under the
ADA, 42. U.S.C. §§ 12181 *et seq.*, and Indiana civil rights law, In. Code § 22-9-1, *et seq.*,
making available damage remedies.

38. The removal of the barriers complained of by plaintiff as hereinabove alleged
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1 was at all times after January 26, 1992 “readily achievable” as to the subject Comfort Suites
2 hotel pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of
3 all the barriers complained of herein together was not “readily achievable,” the removal of each
4 individual barrier complained of herein was “readily achievable.” On information and belief,
5 Defendant’s failure to remove said barriers was likewise due to discriminatory practices,
6 procedures and eligibility criteria, as defined by §302(b)(2)(a)(i)-(iii); 42 U.S.C. §12182
7 (b)(2)(A)(i).
8

9 39. Per §301(9), 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
10 accomplishable and able to be carried out without much difficulty or expense.” The statute
11 defines relative “expense” in part in relation to the total financial resources of the entities
12 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that
13 plaintiff complains of herein were and are “readily achievable” by the Defendant under the
14 standards set forth under §301(9) of the Americans with Disabilities Act. Further, if it was not
15 “readily achievable” for Defendant to remove each of such barriers, Defendant has failed to
16 make the required services available through alternative methods which were readily achievable.
17

18 40. On information and belief, construction work on, and modifications of, the
19 subject Comfort Suite hotel occurred after the compliance date for the Americans with
20 Disabilities Act, January 26, 1992, independently triggering access requirements under Title III
21 of the ADA.
22

23 41. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
24 *seq.*, §308, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil
25 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on
26 the basis of disability in violation of this title or has reasonable grounds for believing that he
27
28

1 is about to be subjected to discrimination in violation of §302. Plaintiff cannot return to or make
2 use of the public facilities complained of herein so long as the premises and Defendant's policies
3 bar full and equal use by persons with physical disabilities.

4
5 42. Per §308(a)(1) (42 U.S.C. 12188), "Nothing in this section shall require a person
6 with a disability to engage in a futile gesture if such person has actual notice that a person or
7 organization covered by this title does not intend to comply with its provisions." Pursuant to this
8 last section, plaintiff has not returned to Defendant's premises since on or about November 14,
9 2023, through November 15, 2023, but alleges that Defendant has continued to violate the law
10 and deny the rights of plaintiff and of other persons with physical disabilities to access this
11 public accommodation. Pursuant to §308(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . .
12 injunctive relief shall include an order to alter facilities to make such facilities readily accessible
13 to and usable by individuals with disabilities to the extent required by this title."

14
15 43. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights
16 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
17 the Americans with Disabilities Act of 1990, including but not limited to an order granting
18 injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being
19 deemed to be the prevailing party.
20

21 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

22 **PRAYER:**

23
24 Wherefore, Plaintiff Derek Mortland prays that this court grant relief as follows:

25 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
26 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
27 **DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, et seq.)**

28 1. For injunctive relief, compelling Defendant to make the Comfort Suites hotel,

1 readily accessible to and usable by individuals with disabilities; and to make reasonable
2 modifications in policies, practice, eligibility criteria and procedures so as to afford full access to
3 the goods, services, facilities, privileges, advantages and accommodations being offered.

4
5 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed
6 the prevailing party; and

7 3. For such other and further relief as the court may deem proper.

8
9 Respectfully submitted,

10 THE MEEKER GROUP, LLC

11 /s/ COLIN G. MEEKER

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